IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 511 OF 2007
IN
NOTICE OF MOTION NO. 47 OF 2007
IN
WRIT PETITION NO. 2556 OF 2007

Mansura Ebrahim Milwala ..Appellant
V/s
Hyderabad (Sind) National
Collegiate Board and ors ..Respondents.

Mr. Arshad Shaikh i/b Y.E. Mooman for the appellant.

Mr. J.P.Cama, Sr. Advocate i/b Mr. G. D. Talreja for the respondents

CORAM : J.N. PATEL AND
A.A. SAYED, JJ.

DATE : 3RD SEPTEMBER, 2007

P.C.

1. Heard learned Counsel for the parties. The appellant has preferred this appeal aggrieved by the order passed by the learned Single Judge in the Revision Application, which was moved by initiating Notice of Motion No. 47/2007, where it was the grievance of the applicant-original respondent that the Consent Terms entered into between the parties are vitiated by fraud for non-compliance of clause (I) of the Consent Terms, entered upon between the parties recorded on 12th October, 2006 in Writ

Petition No. 2556/2006, which reads as under:-

> "(I) The First Respondent shall be reinstated to the post of Librarian in the R.D. National College and W.A. Science College by the Petitioner on her reporting for work on 6th November, 2006 with continuity of service and will be assigned normal duties."

It is the case of the appellant, that the learned Single Judge failed to consider that non compliance of clause (I) of the Terms of the Settlement amounts to deception played on the respondent and by deceiving her that she will be reinstated on her original post and permitted to work as Librarian she was made to agree for settlement which cause to be recorded by the Court. On the basis of serious allegations made in paras 14 to 32 of the memo of appeal, the appellant seeks this Court to set aside the said arrangement between the parties, which are spelt out in the settlement. According to petitioner the Terms of the Settlement as recorded in the order, were out of false representation made by the petitioner No.3, for and on behalf of respondent Nos.1 and 2, therefore, the said Terms of Settlement are not binding as it amounts to fraud.

2. It is the contention of the learned Counsel that the Learned Single Judge dismissed the application for review without referring to the grounds of fraud agitated in the Review Petition.

3. In support of his contention, the learned Counsel appearing for the appellant relied upon the decisions rendered by the Supreme Court in **Union Carbide Corporation and others V. Union of India and others,** reported in (1991) 4 SCC 584, **Ram Chandra Singh V. Savitri Devi and others,** reported in (2003) 8 SCC 319 and **Commissioner of Customs, Kanda V. Essar Oil Ltd. and others,** reported in (2004) 11 **SCC** 364

4. The learned Counsel appearing for respondent submitted that the allegations made against the respondent-management have been denied in the affidavit-in-reply filed in response to the notice of motion and that the learned Single Judge has rightly dismissed the motion by observing that no ground for review has been made out. Liberty has been granted to the appellant t o have recourse to whatever remedy open to her in law.

5. It was also contended before us, by way of preliminary issue by the respondent that an appeal against the impugned order passed in review is not maintainable.

6. Having heard the leaned Counsel for the parties, we are of the view that the facts and circumstances of the case, prima facie do not reveal that the Consent Terms arrived at between the parties and recorded by the learned Single Judge under which the writ petition came to be disposed of, was by practicing any fraud. Further the learned Senior Counsel for the respondent-management makes a statement that if the appellant is so sensitive about the issue, he assures this Court that the respondent-management would abide by the Terms of Settlement, even if the appellant do not report for duty if she harbours a feeling that she is being insulted and humiliated by not allowing her to discharge the work of Librarian. This would not mean in any manner accepting or admitting the allegations made against the management as to the treatment meted out to her.

7. The learned Senior Counsel further offered to pay the dues to the learned Counsel for the appellant in compliance of the terms of settlement and has further assured that she would be paid all the dues of her voluntary retirement, which are going to mature on 6th November, 2007 and also process all her documents and extend all necessary cooperation in getting her pensionery benefits, so as to avoid any type of inconvenience to the appellant by the Management.

8. We find that this is not a fit case for this Court to interfere, as this Court does not find that the impugned order suffers from any error or illegality or for that reason the learned Single Judge had not found merit in the allegations of the fraud agitated by the original petitioner.

9. Consequently the appeal is dismissed.

(J.N. PATEL, J.)

(A.A. SAYED, J.)